



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 4526-00
11 December 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Marine Corps on 21 November 1980 for six years as a SSGT (E-6). At the time of your reenlistment, you had completed more than six years of active service. The record reflects that you served without incident until 20 January 1981 when you were arrested by civil authorities on two counts of first degree murder and one count of first degree rape. On 30 March 1981 you pled guilty to two counts of second degree murder and were sentenced to life in prison. Thereafter, administrative discharge action was initiated based on the civil conviction. On 18 December 1981, the discharge authority directed discharge under other than honorable conditions by reason of misconduct due to conviction by civil authorities. You were so discharged on 4 January 1982. The discharge processing documentation is not on file in the record.

Applicable regulations provide that a Marine convicted by civil authorities for an offense which involves moral turpitude, or for

which the maximum permissible punishment under the Uniform Code of Military Justice is confinement in excess of one year, may be administratively discharged by reason of misconduct.

In its review of your application the Board conducted a careful search of your records for any mitigating factors which might warrant recharacterization of your discharge. However, no justification for such a change could be found given the extremely serious offenses of which you were convicted by civil authorities. The Board noted your contention that you were misrepresented by a court-appointed attorney who conspired with local police to secure your conviction, and you were innocent of the crimes since you were in another state when they occurred. However, this Board has no authority to change a civil conviction. Further, the record indicates that you were convicted on your plea of guilty to two counts of second degree murder. Your contentions relate to evidentiary matters that should have been raised in the appellate process. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director